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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,637	06/30/2003	Jeffrey A. Aaron	190206-1160	1381
38823	7590	08/24/2006	EXAMINER	
THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP/ BELLSOUTH I.P. CORP 100 GALLERIA PARKWAY SUITE 1750 ATLANTA, GA 30339			ZAND, KAMBIZ	
			ART UNIT	PAPER NUMBER
			2132	
DATE MAILED: 08/24/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/611,637	Applicant(s) AARON, JEFFREY A.	
	Examiner Kambiz Zand	Art Unit 2132	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2006.
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-3, 7-9, 12-33 is/are rejected.
7) ☒ Claim(s) 4-6, 10, 11 and 34 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 30 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


KAMBIZ ZAND
PRIMARY EXAMINER

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The text of those sections of Title 35, U.S. Code not included in this section can be found in the prior office action.
2. The prior office actions are incorporated herein by reference. In particular, the observations with respect to claim language, and response to previously presented arguments.
3. Claims 26 and 30 have been amended.
4. Claims 35-39 have been cancelled.
5. Claims 1-34 are pending.
6. Examiner withdraws rejection of claims 26-31 under 35 U.S.C 101 due to correction by the applicant.

Response to Arguments

7. Applicant's arguments filed 06/29/2006 have been fully considered but they are not persuasive.

As per applicant's arguments that Hutchinson et al do not disclose "utilizing keyword matching to obtain vulnerability information" or at least "keyword matching" page 10-14 of the response, examiner makes the following remarks:

a) abstract disclose "vulnerability of asset" which corresponds to applicant's vulnerability information, fig.4, 5 and 7 and associated text disclose vulnerability information and risk assessment in that respect. Therefore the question becomes if

such assessment or collecting of the vulnerability information is being processed or obtained by "keyword matching".

b) Paragraph [0050] discloses search vulnerability by "keyword" as an option. Paragraph [0056] discloses such information is obtained by act "matching".

Therefore the applicant's arguments in that respect are not persuasive.

It is also inherent that any type of matching key word is enforced by rules and a need for a processor to make such comparison, since the computer or computing device only recognizes binary numbers and the processing of such numbers is inherent part of the processors based on the rule set.

Therefore the rejections are maintained.

Claim Rejections - 35 USC § 101

8. **Claims 1, 7, 8, 12** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. A markup language is a disembodied data structure involving no more than descriptive material (see specification, page 5, lines 18-22) and therefore, is nonstatutory under 35 U.S.C. 101. See *In re Warmerdam*, 33 F.3d 1354; 31 USPQ2d 1754. See MPEP § 2106 IV. B. 1. See <http://www.uspto.gov/web/menu/pbmethod/> (35 U.S.C. 101 Training Materials).
9. The claims above do not have a tangible embodiment and represent software only.
10. **Claims 14-25** do not have a tangible embodiment since the computer readable medium also consist of a signal. Examiner suggest "computer readable storage medium". Please

be advised the 101 rules may differ from what has been practiced where limitations such as “computer readable medium” or “computer implemented method” was a proper claims. However the new rejections are being issued in order to have clarity in the claims. The examiner suggestions above would be sufficient to overcome the rejection, and expedite the examination of the application. Examiner has issued another non-final rejection in order for applicant to have a fair opportunity to response to the new ground of rejections rendered.

Claim Rejections - 35 USC § 102

11. Claims 1-3, 7-9, 12-16, 20-22, and 25-33 are rejected under 35 U.S.C. 102(e) as being anticipated by Hutchinson et al (2003/0233438).

Examiner has pointed out particular references contained in the prior arts of record in the body of this action for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. Applicant should consider the entire prior art as applicable as to the limitations of the claims. It is respectfully requested from the applicant, in preparing the response, to consider fully the entire references as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior arts or disclosed by the examiner.

Please see the previous rejection of the former examiner in addition to the following remarks and in the light of the response to the arguments above:

Claims are more detailed with respect to fig.2-8 and their respective associated text.

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Claims 7 and 20 only repeats of the steps disclosed in the independent claims, and it is rejected accordingly.

Claims 8-9 and 21-22

only disclose a counter that is either incremented or decremented, updating the status of the counter that is well known in the art. Also see MPEP 2100 (example given for 101 issues concerning updating a counter), where updating a counter has no patentability weight, and therefore adds nothing inventive or novel to the independent claims.

Paragraph [0015] also discloses the updating capability of the Hutchinson.

Claims 12 and 25 disclose filtering so does paragraph [0037] of Hutchinson where it disclose TCP/IP protocol.

Claims 32-33 disclose database that consist of having descriptive or hierarchical order, so does Hutchinson (see fig.1b and 8 and associated text).


Also see A recitation directed to the manner in which a claimed apparatus is intended to be used does not distinguish the claimed apparatus from the prior art if prior art has the capability to do so perform (See MPEP 2114 and Ex Parte Masham, 2 USPQ2d 1647 (1987)), with respect to claims disclosing only intended use such as given a name to a database, repeat of a process, etc.

Allowable Subject Matter

12. Claims 4-6, 10-11, and 34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kambiz Zand whose telephone number is (571) 272-3811. The examiner can normally be reached on Monday-Thursday (8:00-5:00). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gilberto Barron can be reached on (571) 272-3799. The fax phone numbers for the organization where this application or proceeding is assigned are 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


KAMBIZ ZAND
PRIMARY EXAMINER

08/22/2006

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